

1
2
3
4
5

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

6 EMMA C., et al.,

7 Plaintiff,

8 v.

9 DELAINE EASTIN, et al.,

10 Defendants.

NO. C 96-4179 TEH

**ORDER REGARDING MATTERS
RAISED IN STATUS
CONFERENCE STATEMENTS**

11
12 Having carefully reviewed the Parties' status conference statements, last week the
13 Court concluded that the pressing matters in this case could be addressed adequately in a
14 written order. As an initial matter, the Court is very frustrated by the backsliding evidenced
15 in the Court Monitor's annual report. The two prior years had appeared to give cause for
16 optimism, but the utter lack of progress, and actual regression that has occurred in the last
17 school year, are unacceptable. Ravenswood has simply failed to discharge its responsibilities
18 to provide a free appropriate public education. The CDE has fallen down in its oversight and
19 its provision of compensatory services. These situations must change.

20
21 1. Translation of IEPs and Assessment Reports

22 The one recent bright spot has appeared to be in the translation of IEPs and
23 assessment reports. The Court is guardedly pleased to note that the District has reported that
24 all IEPs and assessment reports have been timely translated thus far this school year. The
25 Court will look for confirmation of this progress in the Monitor's first report of the school
26 year in another few weeks.

27
28

2. Methods of Supervision

In the order of December 20, 2007, the Court directed the CDE to use its presence in the District to assist the District in developing methods of supervision and oversight sufficient to ensure full and effective service delivery for the 2008-09 school year. By May 31, 2008, the Defendants were to have informed the Court Monitor and Plaintiffs of these methods in writing, which they did. CDE submitted a revision in July. If the Defendants disagreed on this issue, they were to have separately informed the Monitor and Plaintiffs of their respective proposed methods. This never occurred. Had the Parties disagreed, the Monitor was to make recommendations, attempt to mediate between the defendants, or issue a directive, at his discretion. Again, this did not happen and the Monitor is unaware of any concerns from the District regarding what the CDE drafted. The Monitor wrote a memo on June 16 stating his expectation that, as there was no disagreement, the District would implement the methods and adhere to their timelines as included in the earlier draft. CDE now asserts that this document was never implemented.

No later than November 26, the District shall inform the Court Monitor in a letter filed with the Court whether, and to what extent, these methods of supervision are being implemented. If they are not being implemented, the Court hereby orders the District to implement this document immediately. If the CDE subsequently believes that the District is failing to implement these methods of supervision, it must act. If there is a small issue of noncompliance, the CDE shall notify the Monitor immediately. If noncompliance is material, then the Court expects that CDE shall file a contempt motion.

3. The Role of CDE

At the May Status Conference, the Court directed the Parties to meet and confer on the issue of the future role of the CDE. Plaintiffs' and the District's Status Conference Statements relay a disappointing turn of events on this issue, which demonstrate that the Parties have yet to determine what this role shall be. Those Statements informed the Court that CDE has apparently disassociated itself from the efforts of the District and the Plaintiffs

1 to resolve this matter. According to the District, the CDE had promised a response by
2 October 10, a date that has now passed.

3 The Court is exasperated that the Parties have yet to resolve this problem. The CDE
4 playing a new, specified role would help it meet the ultimate standard to end this case: that it
5 can ensure that a free appropriate public education will be provided in the District after the
6 case ends. Further, it would contribute short-term benefits to the case. On the other hand,
7 pages 5 and 6 of the document CDE provided to the Court Monitor and the Parties on
8 November 12 offered possible ways that CDE could get meaningfully involved, and may
9 usefully supplement the existing draft.

10 The Court therefore orders CDE to provide a written response to the July 18 draft no
11 later than November 26. Although the Court is not committed to a single vision of how this
12 issue is resolved, it remains important that CDE's role become more clearly defined. The
13 Parties shall have until December 10, 2008 to resolve this matter through a stipulated
14 modification to the consent decree. If the Parties cannot agree, any or all shall file a motion
15 with the Court on December 15 seeking an amendment to the consent decree.

16
17 4. CDE Verification Review: Outstanding Noncompliance

18 CDE indicates that there are two outstanding systemic findings of noncompliance, on
19 which they will do a follow-up review of files. They also say there are nine uncorrected
20 findings for three individual students, on which the CDE says it is reviewing its sanctions
21 options if the District fails to produce the required evidence. The Court has generally taken
22 the position that CDE can supervise Ravenswood in the same way it supervises other school
23 districts. However, any sanction imposed shall not further hinder the District's ability to
24 implement the RSIP.

25 //

26 //

1 Accordingly, the Court hereby orders that resolution of this matter shall proceed in the
2 following manner. No later than November 26, the CDE shall file a letter to the Court
3 Monitor that answers the following questions:

- 4 • As to the systemic noncompliance, when will the file review take place?
- 5 • When will a report with the results be released?
- 6 • What will be the consequences of continued systemic noncompliance?
- 7 • As to the individual findings, what kinds of sanctions are you considering?
- 8 • What kind of evidence do you need from the district?

9 The District shall then respond by filing, no later than December 3, a letter describing
10 whether it has the evidence that CDE requests, and, if yes, why it is taking so long to
11 produce, and if not, when it will be able to produce this information. Although resolution of
12 this matter is left to the discretion of the CDE, in light of the concerns articulated above,
13 prior to the imposition of any sanction, the Defendants and the Court Monitor shall have a
14 conference call about the situation.

15
16 5. Compensatory Education Costs

17 There also remains a dispute about how the costs associated with the compensatory
18 educational services ordered by the Court on December 20, 2007 are going to be paid. The
19 District indicates that it suggested a process to CDE, which promised a response that it never
20 sent.

21 If necessary, this matter shall be resolved through a directive from the Court Monitor.
22 If this issue is not resolved by the Defendants by November 26, on that date the CDE and the
23 District shall each submit to the Monitor a letter detailing their positions on this issue. The
24 Court Monitor shall issue a directive setting forth the process for paying these costs.

25 //

26 //

27 //

28

1 6. Compensatory Education

2 In case the Court's order of October 8 left any doubt, the division of labor among the
3 Parties at this point assigns ultimate responsibility for the provision of compensatory
4 educational services to the CDE. CDE's submission of November 12 helpfully explained
5 some of the obstacles it has encountered in trying to accomplish this task. Yet because this
6 ultimate responsibility lies with CDE, addressing obstacles likewise is the responsibility of
7 CDE. For example, if the District provides faulty addresses or fails to meet its transportation
8 obligations, the CDE must address these issues immediately with the District. If the District
9 is unresponsive, the problem shall be addressed with the Monitor. If that is ineffective,
10 because this is litigation, CDE should then file a motion with the Court, and the Court can
11 order the other Party to comply with its obligations.

12 Beyond this issue of responsibility, the Court is troubled by the sloppiness of the
13 status reports that CDE is submitting to the Court. The Court has received versions of CDE's
14 tracking instrument that are clearly erroneous, as they are inconsistent from one week to the
15 next. For example, on November 3 CDE asserted that it had served 94 students between
16 August 1 and October 31. A week later, they stated that they had served a total of 87
17 students, thus indicating that seven students had somehow lost services they had already
18 received in the intervening week. Likewise, on November 3, CDE said they had provided
19 5710 minutes of paraeducator services; a week later, they said that they had cumulatively
20 provided 4900 minutes, having somehow lost 810 minutes of services in the prior week. It
21 was precisely this kind of sloppiness that led the Court to order the attorney of record to
22 certify the accuracy of the reports under the penalty of perjury and Rule 11. CDE appears to
23 have failed to comply with this aspect of the Court's order.

24 Moreover, in its progress report of November 3, CDE acknowledged that it failed to
25 meet the first benchmark it established to complete the services for the students in Group 1
26 by October 31. Only 25 students of Group 1 have had their services completed; the vast
27 majority, 65 students in Group 1, have yet to complete their services. All of this is very
28 disheartening.

1 The Plaintiffs' status conference statement makes clear that they wish to pursue
2 substantial changes in the way compensatory services are provided, namely seeking
3 educational goods as well as services, the right of parents to select providers, and an
4 extension of the period of time over which compensatory services will be offered to recoup
5 for service deprivations. They also posit that receivership might be necessary to ensure
6 proper service provision. The Court is likewise exasperated that it has been nearly a year
7 since its first order on compensatory services, and CDE still is not properly discharging its
8 responsibilities to provide these services.

9 The Court acknowledges that the CDE has not complied with its order of October 8 as
10 it has failed to complete the provision of services to Group 1 by October 31. Although the
11 Court notes that this was a deadline suggested by the CDE itself in its plan, the Court also
12 recognizes that this was a very short timeline for completing these services. Accordingly,
13 the Court will judge compliance with the October 8 order based on completion of services to
14 Group 2 no later than January 15; services to Group 1 should be completed as quickly as
15 possible, but in no case later than January 15.

16 Furthermore, by November 26, the CDE shall file a letter to the Court Monitor
17 answering the following questions regarding the provision of compensatory educational
18 services:

- 19 • Has the CDE located additional providers?
- 20 • How many providers are available in each discipline now?
- 21 • Has the accuracy of calculations on the amounts of services been verified?
- 22 • Did the CDE use the benchmark dates or the ultimate end date of June 2009 to
23 calculate the FTEs that are needed to complete the CDE plan?
- 24 • Did these calculations include preparatory and travel time?

25 Additionally, the Court observes that Plaintiffs offered viable alternative remedies for the
26 compensatory services problem in their status conference statement. If Plaintiffs seek to
27 amend or expand the requirements of the Consent Decree, they should attempt to reach a
28

1 stipulation with the other Parties regarding these suggested remedies. Absent such a
2 stipulation, they should file an appropriate motion with the Court.

3
4 7. Trends Report

5 The Court Monitor's annual report can only be described as damning. Although there
6 had been substantial progress up until last year, the Court agrees with the Plaintiffs'
7 characterization of service delivery being in a free fall. The Court is deeply distressed,
8 although in no way surprised based on prior status conferences and the Monitor's reports of
9 the last year, about what last year's data show. In brief, the Defendants are failing to
10 accomplish the basic tasks with which they are charged, both by federal law and the terms of
11 the consent decree in this case. Plaintiffs are urging the Court to keep all options on the
12 table, including state receivership. The Court is absolutely keeping open all of these options.

13 What is most clear at this time is that the disabled children of Ravenswood City
14 School District continue to have their civil rights violated by the failure to provide them with
15 a free and appropriate public education. The Court had believed that this case was on the
16 right track, but data over the last year indicates that the Defendants are systematically failing
17 to discharge their responsibilities. The District's compliance with a number of requirements
18 regressed from the prior year, a state of affairs that apparently did not even merit a single
19 sentence in the District's status conference statement. Some of those requirements include
20 assessments of students, sending assessment reports to parents in primary language and
21 within timeline, sending parents proper and timely notice of IEP meetings, translating IEPs,
22 IEPs themselves, staff timelogs, service delivery to students, providing progress reports to
23 parents, and timely notifying parents of their child's entitlement to compensatory educational
24 services.

25 Accordingly, the Court has concluded that in order to stem the terrible decline that has
26 occurred over the last year, there is little choice but to establish interim benchmarks by which
27 progress can be judged in this case en route to full compliance with the terms of the consent
28 decree. The Court hereby establishes the following benchmarks:

% Compliant			
Requirement	2006-07 School Year	Interim Benchmark (1/31/09)	Final Benchmark (2008-09 school year)
6.2.1-assessment content/process	82.1	71	82.1
8.2.1-IEP meeting notice	92	80	90
8.3.1-assessment report prior to IEP meeting	43.6	30	43.6
8.4.2-IEP meeting interpretation	98.8	90	95
9.2.1-IEP process	82.9	75	82.9
9.3.1-IEP content	73.5	60	73.5
11.2.2-discussion re: extracurricular participation	97.4	82	95
12.1.1-staff timelogs	90.3	50	85
12.1.3-service delivery	67.8	50	67.8
12.2.1-progress reports	90.3	80	90
12.3.1-service delivery	89.1	65	85
12.3.2-comp notice	80	70	80
No Current IEP in File-% Noncompliant			
9.2.1/9.3.1	12.1	15	12.1

The District shall achieve the interim benchmarks for the first half of the 2008-09 school year by January 31, 2009, which is the end of the current reporting period. The Monitor shall report on the District's status with respect to the interim benchmarks in the cover memo to his report on that reporting period. The District shall conform to the final benchmarks, which will restore compliance with the RSIP to the levels achieved in the 2006-07 school year, by the end of the current school year on June 30, 2009. The Monitor's Trends Report covering the 2008-09 school year shall report on the District's status with respect to the final benchmarks.

Furthermore, by December 1, 2008, the District shall file with the Court a letter listing the name or names of administrators who will be individually or collectively responsible for ensuring compliance with these benchmarks.

//

//

//

//

1 8. District's Supplemental Status Conference Statement

2 The Court is in receipt of the District's Supplemental Status Conference Statement,
3 which was filed on November 20, 2008. Although the Court is encouraged by the creativity
4 of the District as represented in that document, the mere suggestion of these new ideas does
5 not resolve the problems identified in the text above. The Court is willing to amend or
6 vacate portions of this order to reflect joint stipulations of the Parties as to how progress will
7 be made toward full compliance with the RSIP. Accordingly, the Court hereby orders the
8 Parties to meet and confer regarding that document no later than December 19, 2008, to
9 determine if they can reach a joint stipulation. The Court Monitor will be available to the
10 Parties, if they so desire, to help facilitate this process. Additionally, if agreement is not
11 possible, the Court will entertain appropriate motions from any Party seeking to implement
12 these proposals or other steps toward full compliance with the RSIP.

13
14 **IT IS SO ORDERED.**

15
16 Dated: November 20, 2008



17 Thelton E. Henderson
18 United States District Judge
19
20
21
22
23
24
25
26
27
28